

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
WENDELL L. GRIFFEN, JUDGE

DIVISION IV

CA05-922

February 7, 2007

CHRISTY WINFREY
APPELLANT

AN APPEAL FROM PULASKI COUNTY
CIRCUIT COURT, JUVENILE DIVISION
[NO. JN 2003-1846]

V.

HON. JOYCE WILLIAMS WARREN,
JUDGE

ARKANSAS DEPARTMENT OF
HUMAN SERVICES
APPELLEE

AFFIRMED

In an order filed May 4, 2005, the Pulaski County Circuit Court terminated Christy Winfrey's parental rights to her children: D.W. (born January 16, 2002) and J.W. (born May 14, 2003). Appellant appeals from the termination order, contending that the circuit court erred in finding that it was in the children's best interests to terminate her parental rights. We affirm.¹

Background Facts

The record shows that the children were placed into the custody of the Arkansas Department of Human Services (DHS) on October 22, 2003. DHS entered this case amid

¹The circuit court also terminated the parental rights of the fathers of the two children. Those dispositions are not relevant to this appeal; therefore, information about those two individuals is not recounted here.

allegations of physical and sexual abuse² and inadequate supervision. During the investigation, appellant told DHS that D.W. previously had a heart-valve replacement, suffered with chronic aspiration, and was developmentally delayed. The children were adjudicated dependent-neglected on December 1, 2003, based upon findings of inadequate housing and supervision, upon appellant asking DHS to retain custody of the children, and upon appellant having drug charges that needed to be addressed by her completing drug treatment.

The goal of the case remained reunification until the September 30, 2004, permanency-planning hearing, when the circuit court changed the goal to adoption and termination of appellant's parental rights. At the hearing, the court noted that appellant left a residential drug-treatment program against the advice of treating physicians after only five months. The court further noted that appellant believed she had no drug problem despite failing two drug tests in September 2004. Appellant had not sought individual counseling since leaving the treatment facility despite a past suicide attempt and despite being ordered to undergo counseling. Finally, the court noted that appellant had not maintained a stable home or residence and that she was in danger of having her criminal probation revoked for failure to pay fines and restitution. The termination hearing was held on March 11 and April 8, 2005.³

²The record does not indicate whether the physical and sexual abuse allegations were substantiated.

³The hearing was originally scheduled for March 11, 2005, but was continued because a subpoenaed material witness failed to appear.

Debra Bledsoe, mental health director at Hoover Treatment Center, testified that appellant had difficulty getting through treatment and was focusing on getting her children back rather than the treatment itself. Appellant completed the residential portion and was discharged on May 26, 2004; however, Bledsoe stated that appellant made no growth during her five-month stay. While Hoover issued a letter stating that appellant had completed the program, Bledsoe explained that Hoover issued the letter of completion solely because appellant was at the facility. Appellant was ordered to complete more treatment, and Hoover was asked to provide services; however, Bledsoe testified that Hoover felt that appellant should go elsewhere for treatment.

Stephanie Townes was the family service worker assigned to this case. She testified that, after the children were adjudicated dependent-neglected, appellant was allowed two hours of unsupervised visitation per week at the DHS office. During the case, DHS provided clothing assistance, transportation assistance, random drug screens, and a psychological evaluation. Townes testified that while the court at one time projected that appellant's children would be returned to appellant in September 2004, appellant was unable to maintain progress. She stated that appellant had entered the outpatient drug-treatment program at Step Up Support Center on November 22, 2004, but discharged from that program on February 28, 2005, without completing the treatment. Appellant had moved into a two-bedroom townhouse on January 22, 2005, where she resided with her infant son; however, appellant had lived in three or four different places between the permanency-planning and termination hearings. Townes testified that appellant was participating in

counseling at Little Rock Community Mental Health Services, but that she was not enrolled in a drug-treatment program.

On cross-examination, Townes noted that appellant had only three positive drug screens throughout the case. Townes also noted that appellant worked from November 17, 2004, to January 14, 2005, just before she had another child. She testified that appellant had completed a psychiatric evaluation and that the doctor recommended individual therapy. Townes opined that appellant was at that time compliant with the court order except for providing verification of her employment.

On further examination, Townes stated that appellant obtained housing one week before the termination hearing was originally set and that appellant had lived in the housing for a little over a month, which she opined was not a showing of stability. Townes also did not consider appellant to have stable employment, noting that she did not start working until over a year after the children were removed from her care. She testified that appellant did not start receiving any type of individual treatment until the children had been out of her care for a year.

At the March hearing, appellant testified that she was living in an apartment and that she had attended the outpatient program at the Step Up Center. She noted that she last attended the program on January 20, 2005, and that she left the program because of the birth of her new child on January 24, 2005. She stated that she had worked at an arts-and-crafts store from November 17, 2004, until the birth of her child; however, her doctor told her that she could not work again until approximately March 7, 2005. She testified that she had not

worked long enough to earn maternity leave; therefore, she would have to re-apply for the position. Regarding her housing, appellant testified that she was receiving assistance from the Jericho Coalition. She noted that she had initially found an apartment but had trouble moving into the apartment because of the drug charge on her record. She testified that the Jericho Coalition helped her move into her current apartment.

When the termination hearing reconvened on April 8, 2005, Sarah Sharpe, a social worker at Little Rock Community Mental Health Services, testified that appellant was diagnosed with depressive disorder NOS and had symptoms of post-traumatic stress disorder. She noted that she started working with appellant the previous October and that appellant had progressed in counseling. Sharpe testified that she helped appellant enter the Jericho program. Under the program, appellant's rent is subsidized until she gets income, at which time appellant would be responsible for thirty percent.

Townes was recalled to testify. She stated that appellant told her that she was making \$7.35 an hour at a construction company; however, she had not received a pay stub from appellant verifying employment. Townes performed a home visit the previous day and noted that appellant's apartment was adequate. Appellant also submitted to a drug screen on March 28, 2005, which she passed.

Appellant testified that she was told on March 7, 2005, that she could still participate in the Step Up program; however, on March 22, 2005, she attempted to attend a group session, but was told that she was no longer in the program. She stated that she spoke to Townes, who told her to attend the support groups. Appellant also testified that she was

working for her brother-in-law at a construction company and was in search of a second part-time job. She had a letter stating that she was on her probationary period at that time, but would receive \$8.00 per hour after the end of that period. Appellant testified that she did not refuse to participate in the inpatient program at Arkansas Care. She opined that, had she participated in that program, she would have satisfied the order to do drug-treatment counseling, but that she still would not have adequate housing or employment. She also stated that she felt she had no drug problem based upon the fact that she had not used for a long time; however, she acknowledged that a person with a drug problem would always have a drug problem. Appellant testified that she was willing to continue outpatient treatment for those problems.

Ruth Nash, executive director of the Step Up Center, testified that appellant started outpatient treatment on November 4, 2004, and continued until January 22, 2005, close to the date of the birth of her child. Nash stated that appellant attempted to re-enter the program after the birth of her child, but that appellant was discharged due to an inability to attend sessions. She stated that appellant was currently enrolled in Step Up's supportive services program. Nash opined that appellant still required six months of treatment.

The court entered an order terminating appellant's parental rights to D.W. and J.W. on May 4, 2005. After recounting the history of this case, the court concluded:

In short, this mother is not a fit and proper parent for these juveniles. She has not acted in a timely and consistent manner to comply with all the services that have been offered for the purpose of allowing her to regain the custody of her children. These juveniles need a mother who can be there for them, consistently, without excuses and without delay. This mother has so many needs that are still unmet, and

she is ill equipped to take care of these juveniles until and unless she resolves her own issues of personality problems, drug problems, denial, etc. This Court will not allow her to take all the time she feels necessary before she can or will demonstrate that she can become and remain an appropriate parents [sic]. Continuing contact with the juveniles and their mother could harm the juveniles' health and safety, because their mother has not committed to demonstrate a stable pattern of living for a reasonable period of time. Continued contact with her while she is an unfit parent who does not see the need to change her behavior for her children's benefit could cause these children to have many problems. While it is apparent that their mother chooses to wait to do things on her timetable, that timetable is detrimental to the juveniles' well being and development.

Standard of Review

An order terminating parental rights must be based upon a finding by clear and convincing evidence that termination of a parent's rights is in the best interest of the children, considering the likelihood that the children will be adopted if the parent's rights are terminated and the potential harm caused by returning the children to the custody of the parent. Ark. Code Ann. § 9-27-341(b)(3)(A) (Supp. 2005). The court must also find one of the grounds outlined in section 9-27-341(b)(3)(B). In this case, the court based its termination order on subsections (b)(3)(B)(i) and (ii):

(i)(a) That a juvenile has been adjudicated by the court to be dependent-neglected and has continued out of the custody of the parent for twelve (12) months and, despite a meaningful effort by the department to rehabilitate the parent and correct the conditions that caused removal, those conditions have not been remedied by the parent.

. . . .

(ii)(a) The juvenile has lived outside the home of the parent for a period of twelve (12) months, and the parent has willfully failed to provide significant material support in accordance with the parent's means or to maintain meaningful contact with the juvenile.

Termination of parental rights is an extreme remedy and in derogation of the natural rights of the parents. *Benedict v. Ark. Dep't of Human Servs.*, — Ark. App. —, — S.W.3d — (Nov. 1, 2006). However, courts are not to enforce parental rights to the detriment or destruction of the health and well-being of a child. *Id.* A heavy burden is placed upon a party seeking to terminate the parental relationship, and the facts warranting termination must be proven by clear and convincing evidence. *Id.* Clear and convincing evidence is that degree of proof which will produce in the fact finder a firm conviction regarding the allegation sought to be established. *Id.* We do not reverse the circuit court's finding of clear and convincing evidence unless that finding is clearly erroneous. *Id.* A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire evidence is left with a definite and firm conviction that a mistake has been made. *Id.*

Analysis

For her sole point on appeal, appellant argues that the circuit court erred in finding that there was a potential harm caused by continuing contact with her. She concedes that D.W. and J.W. were out of her custody for more than twelve months prior to the entry of the termination order; however, she contends that the court terminated her parental rights “just as she was starting to get her life in order.”

We cannot say that the circuit court's ruling here was clearly erroneous. The record shows that appellant received some treatment for her drug problem, but it also shows that she was merely “going through the motions” rather than treating herself so that she could become a fit parent. There is no evidence that she received any treatment between leaving

Hoover and the permanency-planning hearing, despite testing positive for drugs twice in September 2004.⁴ Appellant received no drug treatment or individual counseling until November 2004. She stopped participating in the Step Up program to have a child. While appellant eventually showed a willingness to receive treatment, the record shows that appellant would need at least six months of treatment before she would be able to care for the children.

The circuit court found, and the record reflects, that appellant did not make an earnest attempt to make herself a fit parent until the children were out of her care for more than a year. Appellant may argue that her parental rights were terminated “just as she was starting to get her life in order”; however, such eleventh-hour attempts to get her life in order do not outweigh evidence of appellant’s failure to comply with the orders of the court and remedy the issues that caused removal of the children in the first place. *See Lewis v. Ark. Dep’t of Human Servs.*, 364 Ark. 243, — S.W.3d — (2005); Ark. Code Ann. § 9-27-341(a)(4). While there was evidence that appellant might become a fit parent given more time, we would have to ignore the fact that appellant failed to comply with the case plan in the past. *See Trout v. Ark. Dep’t of Human Servs.* 359 Ark. 283, 197 S.W.3d 486 (2004). Appellant made no attempt to get her life in order until (at best) twelve months after the children were removed from her care. She may have been compliant with parts of the case plan throughout

⁴If appellant tested positive in September 2004 and had a child on January 24, 2005, this means that appellant used drugs while she was five months’ pregnant, assuming a full-term pregnancy.

periods of the case; however, “What matters is whether her completion of the case plan achieved the intended result of making her capable of caring for her child.” *Wright v. Ark. Dep’t of Human Servs.*, 83 Ark. App. 1, 7, 115 S.W.3d 332, 335 (2003). The evidence that appellant was simply completing the drug treatment program for the sake of completing it shows that she did not complete the case plan for the purpose of making her capable of caring for her children.

After reviewing the record, we cannot say that the circuit court’s order terminating appellant’s parental rights was clearly erroneous.

PITTMAN, C.J., and VAUGHT, J., agree.